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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10

11 JAMES ESTAKHRIAN and ABDI
12 NAZIRI, on behalf of themselves and all
13 others similarly situated,

14 Plaintiffs,

15 vs.

16 MARK OBENSTINE, BENJAMIN F.
17 EASTERLIN IV, TERRY A COFFING,
18 KING & SPALDING, LLP, and
19 MARQUIS & AURBACH, P.C.,

20 Defendants.

21 Case No.: CV11-3480 FMO

22

23 **DECLARATION OF HARRY A.
SAFARIAN IN SUPPORT OF
PARTIAL OPPOSITION TO
PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
AMEND OR ALTER JUDGMENT**

24 Date: June 6, 2019

25 Time: 10:00 a.m.

26 Place: Courtroom 6D

27 Judge: Hon. Fernando M. Olguin

28 I, Harry A. Safarian, declare and state as follows:

1. I am an attorney at law duly licensed to practice before this Court, and
all Courts of the State of California. I am a partner with The Safarian Firm, APC,
former counsel for Mark Obenstine, Defendant. I make this declaration of my own
personal knowledge. If called upon to testify, I could and would competently testify to
the facts herein.

2. Plaintiffs' counsel did not meet and confer prior to filing the Motion to

1 Amend/Alter the Judgment as mandated by Local Rule 7-3. On April 24, 2019, after
2 the Motion was filed, I emailed Plaintiffs' attorney Mark Chavez. A true and correct
3 copy of that email is attached hereto as Exhibit "A." I emailed Mr. Chavez because he
4 and I have had a very collegial relationship, and because his firm appears at the top of
5 the caption. The email inquired:

6 Mark, I received the request to alter judgment. Judge
7 Olguin never approved the special master's findings. For
8 good reason, it seems. If the judgment is altered as
9 requested, we are going to end up in another year or two of
10 proceedings litigating the issue. This needs to come to an
11 end. Also, there was no meet and confer as required by the
12 local rules before filing this motion. Given my efforts to
13 help you and Obenstine come to a resolution, I found the
14 motion surprising, especially since nothing was said about
15 the subject.

16
17 3. After sending the email, I called Mr. Chavez on the phone. Mr. Chavez
18 stated he was not the one responsible for filing the Motion, and suggested I
19 communicate with one of the other firms representing Plaintiffs. I did so, writing to
20 attorneys Skalet, Alikani, Fay, and Chavez an email, a true and correct copy of which
21 is attached as Exhibit "B," and which states:

22 Gentleman,

23 As you know by now, I no longer represent Mark
24 Obenstine. I will not be involved in any proceedings
25 concerning the appeals that have been filed.

26
27 I received your motion to amend the judgment. As you
28 know, Judge Olguin did not approve the Special Master's

1 recommendations on the subject motions, and no request
2 was made of the Court to do so. In not approving the
3 recommendations, Judge Olguin implicitly denied the
4 Special Master's proposal. Absent an order from Judge
5 Olguin, which was not issued, it appears there is nothing to
6 amend the judgment with. Also, there was never a meet and
7 confer for us to discuss these issues.

8

9 As you also know, I went to pains to assist you in
10 streamlining the trial, and worked cooperatively with you to
11 try to get the matter resolved. Like you, I was also
12 disappointed the case did not resolve informally.

13

14 The motion to amend appears substantively and
15 procedurally improper. I believe very strongly that it will be
16 denied. I ask that you consider withdrawing it, or that one
17 of you give me a call to discuss it. It is my preference to
18 avoid submitting an oppose[tion] or spending further time
19 on these matters. I would appreciate hearing from one of
20 you at your earliest opportunity.

21

22 4. Regrettably, even after I contacted the referenced attorneys and sought to
23 meet and confer with them, and reminded them the Motion was filed without
24 satisfying the meet and confer mandate, none of the attorneys responded.

25 5. As his former counsel, I cannot take a position on Obenstine's alleged
26 conduct. I did seek, quite some time ago, to be relieved from representing him.
27 Plaintiffs' counsel opposed the Motion. Forced to stay in the case, I worked
28 cooperatively with Plaintiffs' attorneys in the pre-trial process, and the parties were

1 able to complete the trial in a single day based upon many stipulations informally
2 reached. Plaintiffs now note that Obenstine has, in apparent violation of an Order of
3 this Court, taken a loan out against his home. I have no information on the subject,
4 and would certainly never condone violations of an Order of any court. But, the
5 possibility Obenstine has limited net worth does not justify making his former
6 counsel, who was forced to remain in the case, guarantor of Obenstine's debts. I note
7 the Motion makes reference to Obenstine having "already expended millions in
8 defense of this litigation..." To the extent Plaintiffs are implying I was the beneficiary
9 of such fees, I can state unhesitatingly that I did not work at a profit in this case, and
10 any insinuation to the contrary is without merit and does not justify the relief
11 requested.

12 6. Attached hereto as Exhibits "C" and "D," respectively, are pleadings
13 submitted to the Special Master in 2016. It has been approximately three years since
14 the motions in question were initiated, and nearly two years since the Special Master
15 issued her proposals. The Court did not accept the proposals, and Plaintiffs/their
16 counsel offer no explanation for not addressing the issue prior to trial. As established
17 in the concurrently filed Opposition, there is no proper basis for bringing the current
18 Motion, and doing so pursuant to Rule 59(e) is clearly improper. This combined with
19 the failure to meet and confer, is potentially sanctionable. Given Plaintiffs' attorneys
20 and I worked cooperatively towards completing trial in an efficient, streamlined
21 manner, I am not seeking sanctions, but do ask that the Court deny the Motion given its
22 lack of merit, and that the issue be brought to a close once and for all.

23 I declare, under penalty of perjury, under the laws of the State of California,
24 that the foregoing is true and correct, and that this declaration was executed on May
25 16, 2019.

26 Date: May 16, 2019

27 By: /S/ Harry A. Safarian

28 HARRY A. SAFARIAN